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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-245

FRANK T. BARR, et al.,

Plaintiffs,

vs.

THE UNITED METHODIST CHURCH, et al.,

Defendants.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA

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TABLE OF CONTENTS

		Page
I.	COUNTER STATEMENT OF QUESTIONS PRESENTED	1
II.	STATEMENT OF THE CASE	3
	A. Factual Background	3
	B. The Proceedings Below	8
III.	REASONS FOR DENYING THE WRIT	9
IV.	THIS ACTION DOES NOT VIOLATE THE DUE PROCESS RIGHTS OF MEMBERS AND UNITS OF THE UMC WHO HAVE NEITHER BEEN NAMED NOR SERVED AS DEFENDANTS	10
V.	IN A CIVIL ACTION INVOLVING A RELIGIOUS ORGANIZATION'S SECULAR CONDUCT, A COURT MAY MAKE FINDINGS CONCERNING THE STRUCTURE AND OPERATION OF THE ORGANIZATION WHICH ARE CONTRARY TO ITS EVIDENTIARY ASSERTIONS WITHOUT VIOLATING THE FREE EXERCISE CLAUSE OF THE CONSTITUTION	12
	A. The First Amendment Does Not Preclude A Court From Resolving Evidentiary Disputes Adversely to a Religious Organization's Assertions	12
	B. Compulsory Deference to a Religious Organization's Witnesses Would Violate the First Amendment	15
	C. The UMC's Polity Is Not Threatened By This Litigation	17
	1. Respondents Must Be Permitted to Sue the UMC	17
	2. The UMC's Existing Polity Need Not Be Altered to Defend This Action	18
VI.	CONCLUSION	21

TABLE OF AUTHORITIES

CASES — PAGE

Barr v. United Methodist Church, 90 Cal. App. 3d 259, 270, 153 Cal. Rptr. 319 (1979) 2, 3, 4, 5, 6, 8, 9, 11, 12, 13, 14, 19, 20
Brady v. Reiner, 198 S.E.2d 812, 841 (W.Va. 1973)..... 19
Brooks v. Chinn, 52 So. 2d 583 (La. 1951) 19
Carnes v. Smith, 236 Ga. 30, 222 S.E. 2d 322 (1976), *cert. denied,* 429 U.S. 868 (1976) 19
Clay v. Crawford, 298 Ky. 654, 183 S.W.2d 797 (1944)..... 19
Engel v. Vitale, 370 U.S. 421, 430-431 (1962)..... 16
Everson v. Board of Education, 330 U.S. 1, 15 (1947) 16
General Council on Finance and Administration of the United Methodist Church v. Superior Court, 99 S. Ct. 35, 38 (1978) (Rehnquist, J., in chambers), *cert. denied,* 99 S. Ct. 281 (1978) 8, 9, 14, 15
Goodson v. Northside Bible Church, 261 F. Supp. 99 (S.D. Ala. 1966), *aff'd,* 387 F.2d 534 (5th Cir. 1967)..... 19
Hoffman v. Tieton View Community Methodist Episcopal Church, 34 Wash. 2d 38, 207 P.2d 699 (1949) 19
Jones v. Wolf, ... U.S. ...., 99 S. Ct. 3020, 3024, n.2 (1979)..... 19
Juneau Spruce Corporation v. I.L.&W. Union, 119 Cal. App. 2d 144, 147, 259 P.2d 23 (1953)..... 11
Milhouse, et al. v. United States Court for the Southern District of California and Trigg, No. 78-1855 (S.D. Cal.) 2, 13
Ohio Southeast Conference Evangelical United Brethren Church v. Kruger, 17 Ohio Misc. 8, 243 N.E.2d 781 (1968) 19
In re Pacific Homes, No. 77-0166-JM (C.D. Cal.) 6
Potts v. Whitson, 52 Cal. App. 2d 199, 205, 125 P.2d 947 (1942) .. 11
Reynolds v. United States, 98 U.S. 145, 166-67 (1879) 16
School District of Abington v. Schempp, 374 U.S. 203, 225-226 (1963) 16
The United Methodist Church et al. v. Sparrow, Civil No. 6881 (Superior Court of Dooly Co., Georgia 1976) 19
Trustees/Peninsula Annual Conference v. Spencer, 183 A.2d 588 (Del. 1962) 19

CASES — PAGE

Turbeville v. Morris, 203 S.C. 287, 26 S.E. 2d 821 (1943)..... 19
United Methodist Church v. St. Louis Crossing Independent Methodist Church, 50 Ind. App. 574, 276 N.E.2d 916 (1971)..... 19
Western Pennsylvania Conference of The United Methodist Church v. Everson Evangelical Church of North America, 312 A.2d 35 (Pa. 1973)..... 19
Wisconsin v. Yoder, 406 U.S. 205, 215 (1972)..... 17

RULES AND STATUTES

Bankruptcy Act, Chapter X, Proceedings for the Reorganization of a Corporation
Rule 10-208(a)(4), (a)(5) and (a)(7) at 1, 3 .....6, 7
Bankruptcy Act, Chapter XI
Section 167 .....6, 7
Sections 167(1), (3) and (5)..... 7
California Code of Civil Procedure
Section 382 8
Section 388 .....8, 10
California Corporations Code § 24002 (West 1972)..... 11
California Welfare and Institutions Code § 16304 (West 1974)..... 5
Federal Rules of Civil Procedure, Rule 17(b) 2
28 U.S.C. § 1257(3) 9, 10-11, 13, 21
United States Constitution, First Amendment.....12, 14, 15, 18
United States Constitution, Fourteenth Amendment..... 14

OTHER AUTHORITIES

Encyclopedia Britannica, 1959 Edition, on "Methodism"..... 8
The Book of Discipline of The United Methodist Church (1976 ed.) 4, 5, 8, 12, 13, 14, 18, 19, 20, 21

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Respondents respectfully request that this Court deny the Petition for Writ of Certiorari sought by petitioners on behalf of The United Methodist Church to review the March 8, 1979, decision of the Court of Appeal, State of California, Fourth Appellate District.

I. COUNTER STATEMENT OF QUESTIONS PRESENTED

This case involves the fundamental right of private citizens to sue for damages caused them by the wrongful conduct of a secular retirement home which conducted business and entered into contracts in the name of The United Methodist Church and its predecessors (the "UMC"). The California Court of

Appeal, noting that the UMC is "a highly organized religious body working through specific agencies," properly concluded that the UMC is susceptible to suit as an unicorporated association under Section 388 of the California Code of Civil Procedure. *Barr v. United Methodist Church,* 90 Cal. App. 3d 259, 270, 153 Cal. Rptr. 319 (1979).[1] The only issues presented are:

> 1. Does a civil action against an unincorporated association violate the due process rights of members and constituent units of the association who are not parties to the action where (a) no attempt has been made to reach their assets and (b) state law specifically prohibits satisfying any judgment from the individual assets of members or constituent units who are not named and served in the action?
>
> 2. In a purely secular dispute between private citizens and a church organization, may a court, without violating the Free Exercise Clause of the Constitution, consider the by-laws, constitution, and other written regulations governing the operation and structure of the organization in determining whether the organization is an unincorporated association under state law, or must the court accept as fact the affidavits of the organization's own religious leaders?

As discussed *infra,* these issues fail to raise a substantial federal question, and for that reason the Petition should be denied.

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[1] In *Milhouse, et al. v. United States District Court for the Southern District of California and Trigg,* No. 78-1855 (S.D. Cal.) ("Trigg"), the District Court concluded that the UMC is an unincorporated association under Rule 17(b) of the Federal Rules of Civil Procedure and suable for violations of the federal securities laws. The lower court's interpretation of California law, unlike the District Court's interpretation of Rule 17(b), presents no federal question for review by this Court.

II. STATEMENT OF THE CASE

A. Factual Background

Pacific Homes is a non-profit corporation, which until February 18, 1977, operated 14 retirement and convalescent facilities in California, Arizona and Hawaii in the name of the UMC. App. Ex. No. 1 (Ex. Nos. 1 and 2 at 1).[2] Pacific Homes was headquartered in Los Angeles, where it shared space with the Los Angeles area office of the UMC and the Pacific and Southwest Annual Conference of The United Methodist Church ("PSWAC"). This multi-state, commercial operation had revenues of over $7 million per year and assets exceeding $30 million. App. Ex. No. 1 (Ex. No. 20 at 3, 4).

Pacific Homes sold Lifetime Care Agreements ("Agreements"), pursuant to which it agreed to provide elderly persons with lifetime accommodations and care, including food, unlimited medical treatment and convalescent care. All residents were required to prepay a substantial sum of money for their lifetime accommodations. A large number of residents also prepaid for lifetime care, many in amounts over $100,000. App. Ex. No. 1 (Ex. Nos. 1, 16, 17, 19). The remaining residents were required to make fixed monthly payments for care. These monthly fees were guaranteed not to increase or were subject to very limited increases. App. Ex. No. 1 (Ex. No. 14 at III-4).

Pacific Homes attracted residents through a nationwide advertising program which publicized the fact that Pacific Homes was "a non-profit corporation of The United Methodist Church." *See, e.g.,* App. Ex. No. 1 (Ex. Nos. 24-28).[3] In its

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[2] All references to "App. Ex. No. . . ." refer to the record used in the California Appellate Court proceedings. References to the record in *Trigg* are designated as "*Trigg* . . . . ."

[3] These advertisements ran in Time, National Geographic, The Wall Street Journal, U.S. News and World Report, Citizen News, National Observer, Retired Officer, Sunset Magazine, Westways and American Senior Citizen News. Deposition of Abbie E. Sargent ("Sargent Deposition"), April 6, 1979, Ex. No. 1.

promotional literature, Pacific Homes stated that it was an agency of the UMC, a non-profit corporation of the UMC and/or sponsored by the UMC. App. Ex. No. 1 (Ex. Nos. 1, 17, 38a-43, 46-47); App. Ex. No. S (Ex. Nos. 50-54). Signs outside each facility, Pacific Homes' corporate stationery and Pacific Homes' Agreements all described Pacific Homes as an "agency of" or "sponsored by" or "a retirement program of" the UMC. App. Ex. No. 1 (Ex. Nos. 15, 22, 31, 32, 36, 37).[4]

Pacific Homes' Articles of Incorporation (i) required it to make annual payments for the benefit of retired UMC ministers, (ii) authorized PSWAC, the UMC Annual Conference having jurisdiction over Pacific Homes, to direct the disposition of Pacific Homes' assets in the event of its dissolution, and (iii) subjected it "to the uses and Discipline of The [United] Methodist Church."[5] App. Ex. No. 1 (Ex. Nos. 3-4). Pacific Homes' Board of Directors has always been appointed by PSWAC or composed of UMC ministers and lay members of the Annual Conference. App. Ex. No. 1 (Ex. Nos. 3-4, 6-18).

[4] Pacific Homes' Director of Public Relations testified that the promotional literature which stressed Pacific Homes' UMC connection "was the strength of our whole program;" it "very definitely . . . induced in potential residents a feeling of confidence in Pacific Homes" and was "a significant factor in the decision of people to come to Pacific Homes." Sargent Deposition at 26, 39, 56.

[5] For example, Pacific Homes was subject to Paragraph 2445 of *The Book of Discipline of The United Methodist Church* (1976 ed.) (hereafter cited as the "*Discipline*"):

> Trustees of schools, colleges, universities, hospitals, homes, orphanages, institutes, and other institutions owned or controlled by The United Methodist Church shall be at least twenty-one years of age. At all times not less than three-fifths of them shall be members of The United Methodist Church, and all must be nominated, confirmed, or elected by some governing body of the Church or by some body or officer thereof to which or to whom this power has been delegated by the governing body of the Church. . . .

More importantly, Pacific Homes had specific authority to operate in the name of the UMC. It was granted "affiliation" and later "certification" status by the Health and Welfare Certification Council of the UMC. This meant that Pacific Homes had met specified professional, scientific, and financial standards, had "demonstrated . . . its United Methodist Church relationship . . . [and was, therefore,] . . . *entitle[d] to identify itself as an agency of The United Methodist Church.*"[6] App. Ex. No. 9 (Ex. Nos. 4 at 31 and 5 at III). (Emphasis supplied.) The UMC Bishop in charge of PSWAC, who was both a director of Pacific Homes and President of the UMC's Council of Bishops, repeatedly affirmed the UMC's sponsorship of Pacific Homes in its written promotional materials. App. Ex. No. S (Ex. No. 16 at 1; 18 at 1, 3; 19 at 1, 5); App. Ex. S (Ex. No. 18; Ex. No. 16 at 1); App. Ex. S (Ex. No. 18 at 1, 3); App. Ex. No. S (Ex. No. 19 at 1, 5).

Unfortunately, Pacific Homes failed to provide the lifetime security it promised its residents. Rather than setting aside the large sums it was receiving as prepaid fees to provide funds for resident care in future years (as required by California law),[7] Pacific Homes used the money, *inter alia*, to build new facilities, to cover current operating deficits and to make speculative investments for other missions served by the UMC. App. Ex. No. 5 (Ex. No. 11). As a result, there were insufficient funds to

[6] The UMC has vigorously protected its "Methodist" trademark. In November 1975, The General Council on Finance and Administration of the United Methodist Church demanded that the "United Methodist Church Insurance Program," a private organization, "cease" using the terms "Methodist," stating "[y]ou do not have the approval or consent of *The United Methodist Church* to use . . . as a part of a name or any business firm or organization the term 'Methodist' or 'United Methodist.'" App. Ex. No. M (Ex. No. 16 at 2). This demand was successful. App. Ex. No. S (Ex. No. 23). *See also* the *Discipline* ¶ 2402 at 532.

[7] California Welfare and Institutions Code § 16304 (West 1974).

meet the cost of future care. App. Ex. No. 16 (Ex. Nos. 13, 14); App. Ex. No. 1 (Ex. No. 14); App. Ex. No. S (Ex. No. 11).

Finally, on February 18, 1977, Pacific Homes filed for an Arrangement under Chapter XI of the Bankruptcy Act, which was subsequently converted to Proceedings for the Reorganization of a Corporation under Chapter X of the Act. *In re Pacific Homes*, No. 77-0166-JM (C.D. Cal.). Residents, many of whom had expended the bulk of their life savings to prepay for their Agreements (and many of whom, relying upon the UMC's assurance of lifetime care, made substantial gifts to the UMC and its constituent units), must now make monthly payments of between $350 and $850 to the Bankruptcy Trustee for food and lodging for which they previously fully paid. In addition, the Bankruptcy Trustee eliminated virtually all medical care required under the Agreements. As a result, residents, more than half of whom have incomes of less than $10,000 per year, must now pay for these expenses as well. Affidavit of William S. Lerach, dated June 18, 1979, ¶¶ 3, 4, 6, 16 (Ex. Nos. 1, 14).

The complaint, filed by plaintiffs on behalf of themselves and some 1,800 other residents of Pacific Homes, named as defendants the UMC and certain of its constituent agencies—The General Council on Finance and Administration of The United Methodist Church ("GCFA") and PSWAC.[8] The complaint seeks declaratory relief and damages for breach of contract, fraud, deceit, and statutory violations against the defendants based upon their legal relationship to Pacific Homes, as well as their direct participation in and endorsement of the alleged wrongdoing.

[8] All references are to the First Amended Complaint (App. Ex. No. C). A Consolidated Amended Complaint was subsequently filed adding two other church agencies—The General Board of Global Ministries of The United Methodist Church ("GBGM") and The Health and Welfare Ministries Division of The Board of Global Ministries of The United Methodist Church ("HWMD").

Pursuant to Section 167 of the Bankruptcy Act, Pacific Homes' independent Bankruptcy Trustee recently filed in federal court a report of his two and one-half year investigation into the collapse of Pacific Homes. In his Report, a copy of which is lodged herewith, the Bankruptcy Trustee concludes that:

> *For more than 25 years, Pacific Homes perpetrated a fraud on unsuspecting elderly people in the name of the Methodist Church.*
>
> . . . .
>
> Pacific Homes has always been a Methodist institution. It has always complied with the dictates of the Methodist Church and carried out Church missions without regard to economic consequences. The Methodist Church sanctioned the policies and actions of Pacific Homes, was fully informed of the financial problems for many years and encouraged Pacific Homes to present itself to the public as a Methodist agency. Instead of taking appropriate action to correct the problems at Pacific Homes, the Church allowed the same business practices to continue despite the knowledge that such continuance could only worsen the financial condition of Pacific Homes and add to the injuries and damages sustained.
>
> The Methodist Church allowed Pacific Homes to fail. The Church should not be allowed to escape liability for the wrongs it has wrought. Legal actions have already been instituted against the Methodist Church by the Trustee and by the residents of the homes.[9]

[9] "Report of the Trustee of Pacific Homes pursuant to Sections 167(1), (3) and (5) of the Bankruptcy Act and Chapter X Rule 10-208(a)(4), (a)(5) and (a)(7)" at 1, 3. (Footnote omitted.) Respondents respectfully request that the Court take judicial notice of the Report, which was filed with the United States District Court for the Central District of California on October 26, 1979.

B. The Proceedings Below

In January 1978, petitioners sought to quash service of process, contending that the UMC was merely a loose, nonauthoritarian spiritual federation, not suable as an unincorporated association. The trial court granted petitioners' motion to quash, relying solely upon an excerpt from the 1959 edition of the Encyclopedia Brittanica on "Methodism"—not The United Methodist Church.[10] The California Court of Appeal unanimously reversed, holding that:

> (a) The UMC is a hierarchical religious organization suable as an unincorporated association under California Code of Civil Procedure § 388 (90 Cal. App. 3d at 263-272);
>
> (b) This action does not violate the due process rights of individual members or constituent units of the UMC who have not been named as defendants in the action (*Id* at 272-273); and
>
> (c) The constitutional guarantees of freedom of religion do not bar this action against the UMC by private citizens complaining of wrongful secular conduct (*Id.* at 273-276).

After the California Supreme Court denied review, Mr. Justice Rehnquist, and later this Court (two Justices not participating), denied petitioners' motion for a stay pending action on the Petition.[11]

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[10] "Methodism" is a form of religious worship or belief of which the UMC is but one of many adherents. *See, e.g., Discipline* at 7-18.

[11] On July 25, 1979, the trial court certified this action as a class action pursuant to California Code of Civil Procedure § 382 on all causes of action except specific performance.

III. REASONS FOR DENYING THE WRIT

Stated in its simplest terms, petitioners urge that this Court resolve what they concede to be a dispute over whether the UMC is organized, structured and operates as an unincorporated association *under state law.* A "plethora of evidence on the question of whether the UMC is an unincorporated association" was presented to and considered by the state courts, which ultimately rejected petitioners' contentions. 90 Cal. App. 3d at 263. Petitioners do not assert that Section 388 of the California Code of Civil Procedure, which defines unincorporated associations, is unconstitutional. Rather, petitioners argue that the lower court's determination that the UMC falls within Section 388 is erroneous. 28 U.S.C. § 1257(3) simply does not provide for review by this Court to reconsider and reweigh that evidence.[12]

In an effort to bring themselves within Section 1257(3), petitioners have fashioned arguments that due process rights of persons not parties to the litigation may be violated (although no such violation has taken place, nor could it under state law) and that the First Amendment, as a matter of law, prohibits civil courts from reviewing or considering any evidence other than the UMC's own experts, in determining whether the UMC is an unincorporated association subject to suit for its wrongdoings.

As respondents demonstrate below, no person's due process rights have been or could be violated, and, in any event, the question is not yet ripe for consideration. Petitioners' First Amendment arguments are totally without merit, as previously determined by Mr. Justice Rehnquist in a related ruling, *General Council on Finance and Administration of the United Methodist Church v. Superior Court, supra,* 99 S. Ct. 35, 38 (1978) (Rehnquist, J., in chambers), *cert. denied,* ..... U.S. ....., 99 S. Ct. 281 (1978). *See* pp. 14-15, *infra.*

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[12] Respondents agree that the decision of the Court of Appeal is a final decision for the purpose of 28 U.S.C. § 1257.

IV. THIS ACTION DOES NOT VIOLATE THE DUE PROCESS RIGHTS OF MEMBERS AND UNITS OF THE UMC WHO HAVE NEITHER BEEN NAMED NOR SERVED AS DEFENDANTS

Whether the UMC is organized, structured and operated in a fashion which makes it amenable to suit under California statutory provisions defining and permitting suits against unincorporated associations is a question solely of state law with no constitutional implications. California's resolution of this issue presents no federal question and, therefore, the criteria for review under 28 U.S.C. § 1257(3) have not been met.

Petitioners seek to create a constitutional issue, however, by claiming that this action jeopardizes the individual assets of some 10 million members of the UMC in violation of their due process rights. There are several reasons why petitioners' due process claims are without merit.

First, there can be no denial of due process *until and unless* the California courts attempt to reach the individual assets of members of the association not personally served and before the courts. No such action has been taken here. Indeed, plaintiffs have stated that no attempt will be made to reach the personal assets of members not before the court. In any event, until such an attempt has been made, the purported due process issue is not ripe for review.

Second, California law contains due process safeguards which prohibit access to the assets of a member of an unincorporated association to satisfy a judgment against the association, unless the member is named as a defendant and served in the action. Section 388 of the California Code of Civil Procedure authorizes suit against an unincorporated association *in its common name.* A plaintiff seeking "a judgment against [any member of an unincorporated association] based on his personal liability" must name and serve him. California Code

of Civil Procedure § 388 (West 1972). "When . . . sued by the common name the association is held to be a separate entity . . . and the action against it is regarded as an action against a single defendant. . . ." *Potts v. Whitson,* 52 Cal. App. 2d 199, 205, 125 P.2d 947 (1942). As stated in *Juneau Spruce Corporation v. I.L.&W. Union,* 119 Cal. App. 2d 144, 147, 259 P.2d 23 (1953): "*[L]iability is created only against the association and not against its individual members.*" (Emphasis added.) *See also* California Corporations Code § 24002 (West 1972).

Finally, by *ipse dixit,* petitioners contend that because the UMC allegedly does not exist, it has no assets that could be used to satisfy a judgment against it.[13] They argue that as a practical matter plaintiffs will be forced to seek the individual assets of the UMC's 10 million members. Petition at 23-25. Petitioners' argument was made to and rejected by the Court of Appeal:

> To add a constitutional requirement, however, that before UMC can be recognized as an entity, plaintiff must also identify each asset that may be reached to assure the absence of any third party claim in that asset, is to create an issue where one does not exist. We recognize the inextricable relationship between obtaining a judgment and having it satisfied; nevertheless, to adjudicate questions on ownership of property before judgment is essentially a reversal in the process of litigation.

90 Cal. App. 3d at 272.

[13] Respondents have been prevented from taking *any* discovery against the UMC, which asserts that: "Since The United Methodist Church is not a legally cognizable entity, such denomination cannot receive, act upon or respond to any request for discovery. . . ." Response to Request for Discovery and Production of Documents Pursuant to C.C.P. § 2031 (February 13, 1978). Thus, while insisting that the courts must accept what they say about their association, petitioners deny all access to contrary evidence.

Moreover, the assertion that the UMC has no assets is inconsistent with the lower court's finding that the UMC has associational assets designated as "general church funds" which are collected and disbursed by GCFA. General church funds include about $60 million per year collected at the local church level and forwarded through the UMC's annual conferences to GCFA. *See, e.g.*, App. Ex. No. M (Ex. No. 2 at 17-18). GCFA, of course, is accountable[14] and amenable[15] to the UMC in all matters relating to the receipt, disbursement and reporting of general church funds. *Discipline* ¶¶ 904, 906 at 330, 333.

Simply stated, no one's due process rights are in jeopardy, nor could they be under California law.

V. IN A CIVIL ACTION INVOLVING A RELIGIOUS ORGANIZATION'S SECULAR CONDUCT, A COURT MAY MAKE FINDINGS CONCERNING THE STRUCTURE AND OPERATION OF THE ORGANIZATION WHICH ARE CONTRARY TO ITS EVIDENTIARY ASSERTIONS WITHOUT VIOLATING THE FREE EXERCISE CLAUSE OF THE CONSTITUTION

A. The First Amendment Does Not Preclude A Court From Resolving Evidentiary Disputes Adversely to a Religious Organization's Assertions

Despite the Court of Appeal's ruling that the "UMC is a highly organized religious body working through specific

[14] "*Accountability.* The requirement upon an organized structural unit in The United Methodist Church to report, explain, or justify its action(s) to another unit in the church structure." *Discipline* Glossary at 591.

[15] "*Amenability.* The requirement upon an organized unit in The United Methodist Church to answer to, act under instruction of, agree with, yield to, or submit to another unit in the church structure. It connotes legal responsibility. On the general level, all of the general agencies that have been constituted by the General Conference are amenable to the General conference, except as otherwise provided." *Discipline* Glossary at 592.

agencies . . ." (90 Cal. App. 3d at 270), petitioners repeatedly argue that *"in fact"* the UMC is a loosely-structured "connectional" religious denomination composed of "largely independent units" in which there is no "chain of command." (Emphasis added.) *E.g.*, Petition at 6, 8, 12, 13, 29, 37. As noted above, a state court's resolution of such factual disputes does not present a federal issue reviewable under 28 U.S.C. § 1257(3).

Petitioners therefore offer the rather novel proposition that the Free Exercise Clause of the First Amendment somehow prohibits a civil court from independently reviewing the evidence in a secular dispute and making findings and reaching conclusions regarding the jural status of a religious organization whenever those conclusions are contrary to the assertions of the religious organization's own witnesses.[16] By so arguing, peti-

[16] The "experts" upon whose assertions petitioners rely were severly impeached. For example, the record shows that GCFA asks for, accepts and processes checks payable to "The United Methodist Church." *Trigg* Affidavit of William S. Lerach, dated June 30, 1978, Ex. Nos. 32, 33, 34 and 72. Nevertheless, Dr. Murray H. Leiffer, upon whose affidavit petitioners place great reliance (*see* Petition at 8, 9, 10, 11, 13, 29) testified that it "would be impossible" to write a check payable to the UMC; that no one would have authority to cash a check payable to the UMC; that he knew of no vehicle that exists to take checks written to the UMC, cash and process them; and that such a check would be returned to the sender. *Trigg* Deposition of Murray H. Leiffer, June 9, 1978 ("Leiffer Deposition") at 46. Similarly, charts purporting to show the structure of UMC attached to Leiffer's affidavit were not prepared by him; he did not know who prepared them, and he was unable to explain the entries on them. Leiffer Deposition at 43-44, 76. Leiffer also admitted that the use in his affidavit of the term "in harmony with" to describe how certain UMC units must act was a "weasel term." Leiffer Deposition at 50. Leiffer admitted that the provision in the *Discipline* assigning responsibility for the "oversight of the . . . temporal affairs of the whole church" to the Council of Bishops was inconsistent with his testimony, but he simply does not believe the *Discipline* provision to be true. Leiffer Deposition at 40-42.

tioners seek to convert their adversarial position into a religious rite, thereby precluding the evaluation of any evidence other than their own—even an independent reading of the plain language of the *Discipline*. As the Court of Appeal recognized, petitioners seek a rule of constitutional law that effectively would immunize unincorporated religious organizations from suit for wrongs committed in the secular area:

> To defer absolutely to authoritative church experts would be to grant immunity to religious organizations in cases which might arise far afield from religious activities with the resultant effect that civil courts would then be subordinate to organizations which might attempt to classify themselves as religious to obtain the benefits of the shield of First Amendment protection.
>
> * * *
>
> The statutory enactments involved in this action are for the purpose of providing substantive rights to citizens and to assure access to the courts, including the right to sue organizations functioning as unincorporated associations. The internal ecclesiastical judicial system of UMC does not provide any method of redress for plaintiffs. The use of the courts as a method of dispute resolution cannot be foreclosed to this class of plaintiffs who have alleged fraud, breach of contract and statutory violations because one of the named defendants is a religious body. Neither the state nor federal Constitution may be interpreted in a manner which would deny plaintiffs the right to sue UMC.

90 Cal. App. 3d at 274-76.

Indeed, the same argument was made to and rejected by Mr. Justice Rehnquist in an earlier proceeding in this action:

> In my view, *applicant [GCFA] plainly is wrong when it asserts that the First and Fourteenth Amendments prevent a civil court from independently examining, and making the*

> *ultimate decision regarding, the structure and actual operation of a hierarchical church and its constituent units in an action such as this.* There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes. See *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich, supra.* But this Court never has suggested that these constraints similarly apply outside the context of such intraorganizational disputes. Thus, *Serbian Orthodox Diocese* and the other cases cited by applicant are not in point. Those cases are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. *Id.,* 426 U.S. at 709-710, 96 S.Ct. at 2380-2381. *Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract and statutory violations are alleged.* As the court stated in another context, 'Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public.' *Cantwell v. Connecticut,* 310 U.S. 296, 306 . . (1940).

General Council on Finance and Administration of The United Methodist Church v. Superior Court, supra, 99 S. Ct. at 38 (emphasis added).

B. Compulsory Deference to a Religious Organization's Witnesses Would Violate the First Amendment

The result petitioners seek would require this Court to create an evidentiary privilege for religious organizations involved in civil litigation arising from their secular activities which would not be available to non-religious organizations. Such a privilege would violate the Establishment Clause of the

First Amendment, which prohibits "laws which aid one religion, aid all religions, or prefer one religion over another." *Everson v. Board of Education,* 330 U.S. 1, 15 (1947).

The Establishment Clause requires strict governmental neutrality with respect to religious belief, doctrine and dogma. *School District of Abington v. Schempp,* 374 U.S. 203, 225-226 (1963). Government action "establishes" religion in violation of the First Amendment when it directly aids one or all religious groups, whether this aid operates to coerce non-believers or not. *Id.* at 222; *Engel v. Vitale,* 370 U.S. 421, 430-431 (1962). Granting religious organizations the privilege of having their witnesses' opinions treated as binding on civil courts operates to establish religion by placing religious organizations beyond civil court jurisdiction and permitting them to avoid their secular legal obligations.

> Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices.
>
> . . . .
>
> Can a man excuse his practices to the contrary because of his religious belief? *To permit this would be to make the professed doctrines of religious belief superior to the law of the land,* and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Reynolds v. United States, 98 U.S. 145, 166-67 (1879) (emphasis added).

To require the federal and state courts to rubber stamp positions taken by witnesses appearing on behalf of religious organizations, when no such deference is accorded secular associations, would breach the wall of separation between church and state.

C. The UMC's Polity Is Not Threatened By This Litigation

The Petition acknowledges that respondents' right to legal redress for the secular wrongs complained of is one of those fundamental "interests of the highest order . . . not otherwise served"[17] which justifies infringement on the free exercise of religion. Petition at 38. However, petitioners argue that permitting a suit against the UMC is not necessary to protect respondents' admittedly fundamental rights because (i) "any unit" of the UMC can be sued and (ii) to permit a suit against the UMC would require it to create "an overarching central management," thus causing the UMC to restructure its polity against its will. Petition at 10, 12 and 38. The implication is that if respondents have been wronged, redress is readily available against PSWAC, GCFA, GBGM and HWMD.

1. *Respondents Must Be Permitted to Sue the UMC*

Each of the subordinate units of the UMC sued in *Barr* has denied any liability to plaintiffs. For example, GCFA alleges:

> Plaintiffs never advised GCFA that they deemed themselves to have some legally enforceable relationship with it and, thus, GCFA never had reason to suspect that Plaintiffs might some day assert such a relationship.
>
> . . . .
>
> GCFA has had no involvement whatsoever in the formation, financing or operation of Pacific Homes.

Answer of GCFA filed December 19, 1978, at ¶¶ 14, 8. *See* GBGM Answer filed December 19, 1978, at ¶¶ 13, 28, 31; PSWAC Answer filed December 19, 1978, at ¶¶ 4, 5, 6.

Pacific Homes operated in the name of the UMC and entered into contracts in the name of the UMC, not GCFA or GBGM, which are subordinate units within the UMC per-

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[17] *Wisconsin v. Yoder,* 406 U.S. 205, 215 (1972).

forming specific missional and financial functions for it on a nationwide basis. In short, each of the UMC units sued is vigorously defending on the ground that Pacific Homes had no legal relationship to it (as opposed to the UMC) and that respondents did not rely on it (but, rather, relied on the UMC for support and sponsorship). After all, defendants would argue, Pacific Homes' contracts, signs and promotional materials referred to "The United Methodist Church," not its constituent parts.

Under California law, any member or constituent unit of an unincorporated association is entitled to assert whatever individual defenses are available, and no member or unit can be held liable until individual legal responsibility is established. The vigorous assertion of these individual defenses by each of the UMC units named as defendants emphasizes the legal and practical necessity for a suit against the unincorporated association in whose name Pacific Homes operated and contracted.

2. *The UMC's Existing Polity Need Not Be Altered to Defend This Action*

The Petition asserts that the UMC "cannot conduct the defense of a lawsuit," "lack[s] the capacity to conduct litigation" and that permitting it to be sued as an unincorporated association will require the creation of a central management. Petition at 25, 27 and 38. Petitioners thus argue that defense of a civil action for damages is an unconstitutional infringement of the free exercise of the Methodist faith.

This argument fails for several reasons. First, petitioners' contention that the court's ruling will result in a mandatory restructuring of the inner workings of the UMC, thus violating the First Amendment, flies in the face of prior court decisions as well as the *Discipline*.

> [T]hose who call themselves Methodists have governed themselves since the formation of this State in a connectional and hierarchical form of church government. *Further, the polity of the United Methodist Church and its predecessor organizations is readily identifiable as a hierarchical church structure. No reason for inquiry into church doctrine or interpretation of ecclesiastical law is necessary to reach this conclusion.* *See* Book of Discipline U.M.C. (1968), supra, ¶ 1501. . . .

Brady v. Reiner, 198 S.E.2d 812, 841 (W.Va. 1973) (emphasis added). *See also Jones v. Wolf,* .... U.S. ...., 99 S. Ct. 3020, 3024 n.2 (1979).

Indeed, the UMC was a defendant and a cross-claimant in *United Methodist Church v. St. Louis Crossing Independent Methodist Church,* 50 Ind. App. 574, 276 N.E.2d 916 (1971), and sued as a plaintiff in *The United Methodist Church, et al. v. Sparrow,* Civil No. 6881 (Superior Court of Dooly Co., Georgia 1976). App. Ex. No. S (Ex. Nos. 8-10). A host of decisions have recognized, without exception, that the UMC is a hierarchical organization in which its operating units are subordinate parts of an ecclesiastical system of a general church government. *United Methodist Church v. St. Louis Crossing Independent Methodist Church, supra; Carnes v. Smith,* 236 Ga. 30, 222 S.E.2d 322 (1976), *cert. denied,* 429 U.S. 868 (1976); *Brady v. Reiner, supra; Western Pennsylvania Conference of The United Methodist Church v. Everson Evangelical Church of North America,* 312 A.2d 35 (Pa. 1973); *Ohio Southeast Conference/Evangelical United Brethren Church v. Kruger,* 17 Ohio Misc. 8, 243 N.E.2d 781 (1968); *Trustees/Peninsula Annual Conference v. Spencer,* 183 A.2d 588 (Del. 1962); *Hoffman v. Tieton View Community Methodist Episcopal Church,* 34 Wash. 2d 38, 297 P.2d 699 (1949); *Goodson v. Northside Bible Church,* 261 F. Supp. 99 (S.D. Ala. 1966), *aff'd,* 387 F.2d 534 (5th Cir. 1967); *Brooks v. Chinn,* 52 So. 2d 583 (La. 1951); *Clay v. Crawford,* 298 Ky. 654, 183 S.W.2d 797 (1944); *Turbeville v. Morris,* 203 S.C. 287, 26 S.E. 2d 821 (1943).

Moreover, contrary to the UMC's plea that it cannot defend itself, the *Discipline* explicitly provides:

> [*GCFA*] *shall have the authority and responsibility to: . . . take all necessary legal steps to safeguard and protect the interests and rights of The United Methodist Church; . . .* and to *make provisions for legal counsel where necessary in order to protect the interests of the Church at the request of a general agency or a bishop,* as the Council deems advisable. . . ."

Discipline ¶ 907(4) at 338-339 (emphasis added).

Second, petitioners never raised this contention in the trial court. When they raised it for the first time in the Court of Appeal, that court found:

> There is no evidence to show that rendering UMC amenable to suit would affect the distribution of power or property within the denomination, would modify or interfere with the modes of worship affected by Methodists or would have any effect other than to oblige UMC to defend itself when sued upon civil obligations it is alleged to have incurred.

90 Cal. App. 3d at 274.

Third, the fees of counsel who have represented petitioners throughout this proceeding have been paid by GCFA pursuant to the provisions of the *Discipline*.[18] The quality of that representation—and the vigor with which it has been undertaken—assures that the interests of the UMC have been and will be well represented and fully protected.

Finally, petitioners concede that the General Conference can act to defend the UMC's interests. Petition at 14. The Council of Bishops, which is charged with "oversight of the . . . temporal affairs of the whole Church" (*Discipline* ¶ 525 at 227), can convene special sessions of the General Conference of the UMC. *Discipline* ¶ 13 at 22. Thus, even under petitioners' view, the mechanics exist for conducting a defense of the UMC.

[18] Transcript of hearing before Superior Court on October 12, 1979, at 15. *See Discipline* ¶ 907(4).

VI. CONCLUSION

Petitioners' plea that this is a class action in search of a "deep pocket" which if permitted is an "invitation for *in terrorem* litigation against a new class of defendants" is an attempt to substitute emotion for dispassionate legal analysis. As the foregoing discussion makes clear, the Petition fails to present any substantial federal issues for review under 28 U.S.C. § 1257(3). Respondents therefore respectfully request that the Writ not issue.

Dated this 1st day of November 1979.

Respectfully submitted,

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